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MAY 05 2005

OFFICE OF PETITIONS

In re Application of :
James D. Murray, Gary B. Anderson, Elizabeth :
A. Maga, Sushma Pati and David A. Zarling :
Application No. 10/753,266 :
Filed: January 7, 2004 :
Attorney Docket No. UCAL-246 :

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is in response to the "Petition Under 37 CFR 1.47(a)," filed July 1, 2004. The petition was recently forwarded to this office for review.

The petition is dismissed.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.** Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on January 7, 2004 without an executed oath or declaration and naming James D. Murray, Gary B. Anderson, Elizabeth A. Maga, Sushma Pati and David A. Zarling as joint inventors.

Accordingly, on March 4, 2004, a "Notice to File Missing Parts of Application" was mailed, requiring an executed oath or declaration, and a surcharge for its late filing.

In response, on July 1, 2004, the instant petition and a two (2) month extension of time were filed.

A grantable petition under 37 CFR 1.47(a) requires:

- (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);

- (2) an acceptable oath or declaration in compliance with 35 U.S.C. 115 and 116;
- (3) the petition fee; and
- (4) a statement of the last known address of the non-signing inventor.

Applicant lacks items (1) and (2), as set forth above.

As to item (1), applicant has failed to show that the non-signing inventors cannot be found or reached. Applicant has stated that letters were mailed to the non-signing inventors at their last known address, and that the letters was returned because the addressees could not be found at the address given. However, applicant has not submitted a statement of facts that describes any diligent efforts applicant has used to locate the non-signing inventor thereafter.

Where inability to find or reach a non-signing inventor "after diligent effort" is the reason for filing under 37 CFR 1.47, a statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made. The statement of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted. Copies of documentary evidence such as internet searches, telephone directory searches, certified mail return receipts, cover letters of instructions, telegrams, that support a finding that the non-signing inventors could not be found or reached should be made part of the statement. The steps taken to locate the whereabouts of the non-signing inventors should be included statement of facts. It is important that the statement contain facts as opposed to conclusions. *See* MPEP 409.03(d).

As to item (2), an oath or declaration for the patent application in compliance with 37 CFR 1.63 and 1.64 still has not been presented. The declaration submitted July 1, 2004 does not include the citizenship of Sushma Pati or David A. Zarling. Please note, the citizenship requirement is statutory and cannot be waived. *See* 35 USC 115.

Further correspondence with respect to this matter should be addressed as follows:

By mail:	Mail Stop Petition Commissioner for Patents Box 1450 Alexandria, VA 22313
By FAX:	(703) 872-9306 Attn: Office of Petitions
By hand:	Customer Service Window Randolph Building 401 Dulany Street Alexandria, VA 22314

Telephone inquiries related to this decision should be directed to the undersigned at
(571) 272-3228.

A handwritten signature in black ink, appearing to read 'Ed T', followed by a long horizontal line extending to the right.

Edward J. Tannouse
Petitions Attorney
Office of Petitions/Patent
United States Patent and Trademark Office